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ABSTRACT

The Office for Civil Rights (OCR) enforces the laws that prevent discrimination on the basis of race, national origin, sex, disability, and age in America's schools, colleges, and universities. To gauge how the department is fulfilling that mission, a description of the OCR's policy-guidance efforts, complaint investigations, and enforcement activities for Fiscal Year 1996, is provided here. It outlines the responsibilities of the OCR and details how the various laws protecting individuals apply to educational institutions and to students and employees. The report describes how the OCR responds to discrimination complaints from the public and provides examples of the nature of the complaints registered as regards alleged Title IX violations. The process for resolving complaints, along with how the OCR conducts compliance reviews, is likewise described. Some of the office's recent efforts on the latter front include clarification of Title IX requirements and a national conference on minorities and special education. Information on how the OCR helps people and institutions with technical assistance, on the impact of civil rights laws, and on contacting the OCR is provided. Challenges facing the OCR and address information for regional offices are provided. (RJM)

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ED 422 670

Annual Report to Congress

Fiscal Year 1996

U.S. Department of Education
Office for Civil Rights

"Establishing equal opportunity is more than ever the key to America's social and economic well-being. It also is necessary if America is to fulfill its basic promise -- to allow all people to realize their individual talents and capacities to the fullest."

Norma V. Cantú
Assistant Secretary
for Civil Rights

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EA 029 357

Responsibilities of the Office for Civil Rights

The Office for Civil Rights (OCR), in the U.S. Department of Education, is a law enforcement agency. It is charged with enforcing the federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, sex, disability, and age in programs and activities that receive federal financial assistance. These laws are:

- Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination)
- Title IX of the Education Amendments of 1972 (prohibiting sex discrimination)
- Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination)
- Age Discrimination Act of 1975 (prohibiting age discrimination)
- Title II of the Americans with Disabilities Act of 1990 (prohibiting disability discrimination by public entities, including public school districts, public colleges and universities, public vocational schools, and public libraries, whether or not they receive federal financial assistance)

The civil rights laws represent a national commitment to end discrimination in educational programs. The laws are in harmony with the mission of the Department of Education -- ensuring equal access to education and promoting educational excellence throughout the nation.

Most of OCR's activities are conducted by enforcement offices throughout the country. The Office of the Assistant Secretary for Civil Rights provides overall leadership and coordination.

The Laws Apply to Educational Institutions

The civil rights laws enforced by OCR cover programs and activities that benefit from federal financial assistance. Because most educational institutions receive some type of federal financial assistance, these laws have broad application throughout the nation. Coverage of these civil rights laws extends to:

- almost 15,000 school districts
- more than 3,600 colleges and universities
- about 10,000 proprietary organizations
- thousands of libraries, museums, vocational rehabilitation agencies, and correctional facilities

The Laws Apply to Students and Employees

The civil rights laws protect large numbers of students attending, or applying to attend, our educational institutions. The laws protect:

- about 51.7 million students attending elementary and secondary schools
- about 14.4 million students attending our colleges and universities

The laws also protect, in certain situations, persons who are employed, or seeking employment, at educational institutions.

We have changed the nature of our relationships with those outside OCR by establishing constructive working relationships to achieve shared objectives of these civil rights laws. Here are just a few examples of collaborative approaches between OCR and others that have resulted in positive outcomes for students facing discrimination:

> "If I have learned anything ... as Secretary, it is that serious change in education cannot be imposed from without. We have learned that serious change comes from within. It comes when people in a community come to the table and engage in constructive and thoughtful conversation with each other. And it comes when all parties to an issue form and work towards a true partnership for change."
>
> Secretary of Education, Richard Riley
> October 16, 1995

- The State of Tennessee has asked OCR's Atlanta Office to assist in implementing a recently enacted state statute that applies Title VI requirements to all state agencies. OCR will train state staff and help develop a compliance program.

- Partnerships are being encouraged to increase parental involvement and participation. A number of Colorado school districts are using parent groups to monitor voluntary action plans and to obtain recommendations for improving access to quality education. OCR's Chicago Office held a workshop entitled "Language Minority Parents as Partners in Education" that focused on 16 Indiana school districts.

- At the request of the Los Angeles Public Schools, OCR's San Francisco Office is providing technical consultation to assist the district in revising its master plan for serving 295,000 limited English proficient students.

> "We felt that your collaboration with us on the issues of the resolution truly embodied the concept of 'Team.' ... You developed an atmosphere of comfortable collaboration that we never anticipated from a government agency. In this district, you have left an impression of an agency which truly seeks to meet the needs of the people it serves."
>
> Director of Special Education
> Putnam Valley Central School District, New York
> October 2, 1996

Working together with States and other stakeholders, OCR achieves positive change for students facing discrimination.

OCR Responds to Discrimination Complaints from the Public

Persons who believe there has been a violation of the civil rights laws enforced by OCR may file discrimination complaints with the office. The complaint process provides a forum for resolution of alleged discrimination against individuals protected by the civil rights laws.

During FY 1996, OCR received 4,828 discrimination complaints alleging a wide range of civil rights concerns affecting access to equal educational opportunities. Of the total, OCR received 868 Title VI complaints alleging race, color or national origin discrimination. Complaints alleged a variety of discriminatory situations, including issues related to:

- discriminatory ability grouping practices
- discriminatory discipline practices
- discriminatory student assignment policies
- discriminatory interdistrict student transfers
- unlawful school segregation
- racial harassment
- discriminatory student housing practices on college campuses
- discriminatory academic grading practices

Three hundred twenty-one complaints were received alleging sex discrimination in violation of Title IX. Issues raised by these complaints included:

- denial of equal opportunity in interscholastic or intercollegiate athletics
- discriminatory treatment of pregnant students
- discriminatory admission practices in postsecondary institutions
- [redacted]
- discriminatory administration of student health insurance plans

Disability discrimination complaints received pursuant to Section 504 and Title II totaled 2,533. They also presented a variety of discriminatory situations including:

- discrimination occasioned by inaccessible school facilities and programs

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- failure to provide appropriate regular or special education services
- failure to provide services to students with disabilities in appropriate integrated settings consistent with their educational needs
- discrimination in suspension and expulsion of students with disabilities
- denial of appropriate academic adjustments and modifications
- failure to provide auxiliary aids for students with impaired sensory, manual, or speaking skills

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Every day the Office for Civil Rights provides guidance and resolves cases that touch the lives of America's students. The office works to achieve positive solutions that will make a real difference in providing educational opportunities that would otherwise be improperly denied or limited.

For example, OCR is developing for the first time in the agency's history a statement of legal principles to guide OCR's work in the area of testing and assessment, and instituted an ongoing relationship with the National Academy of Sciences to further develop the agency's expertise and ability to address problems of discrimination related to various testing practices. Among its most significant case resolutions in 1996, OCR successfully resolved the allegations of a complaint against the Educational Testing Service and the College Entrance Examination Board. As a result, beginning with the October 1997 administration of the PSAT, a test of written English (a multiple choice test that measures writing skills) will be added to the test. The revised test will more accurately reflect the true potential of the students competing for National Merit Scholarships.

> "From the first phone call I felt confident [the OCR investigator] would do all she could to solve my problem, which admittedly was not major, but it was important to my son, who has emotional problems, so that makes it very important to me. ... There was a time constraint on this problem and she got it resolved right on time. I can't say enough about her true concern and professionalism throughout."
>
> A parent from Pearl River School District, New Jersey

> "Words do not express accurately the feelings of gratitude my parents and I share for your commitment to help me ... As I walk across the stage to receive my diploma, I will say thank you in my heart for your help ... Without all of your support I would not graduate with the honors cords that mean so much to me."
>
> A high school graduate from Stover, Missouri

In almost 60 percent of the 1996 cases determined appropriate for OCR intervention and resolution, OCR facilitated a resolution that resulted in changes on behalf of students protected by the civil rights laws. In 1,452 cases involving many times more students, OCR helped students achieve equal access to educational opportunity by putting an end to discriminatory practices.

How OCR Resolves Complaints

OCR's primary objective in complaint resolution is to resolve the complainant's allegations of discrimination promptly and appropriately. OCR used a variety of techniques to resolve 4,886 complaints in FY 1996. These include early complaint resolution (where OCR facilitates voluntary resolution discussion between the parties), agreements for corrective action (which affords the subjects of the complaints the opportunity to voluntarily address the concerns raised in the complaint), and enforcement (which involves requiring remedies where investigations result in findings of civil rights violations which are not voluntarily corrected). Any approach, or combination of approaches, may be initiated at any time and multiple approaches may be used to resolve any complaint. This flexible approach allows OCR to:

- provide timely and effective intervention at the beginning of the complaint process
- focus on achieving effective change
- make students, parents and school officials central to the resolution of complaints

OCR Conducts Compliance Reviews

Not all illegal discrimination can be stopped or remedied by responding to complaints that arrive from the public. Agency-initiated cases, typically called "compliance reviews," permit OCR to target resources on compliance problems that are particularly acute, or national in scope, or which are newly emerging.

Targeted compliance reviews maximize the impact of OCR's resources and balance the enforcement program. Compliance reviews assure that vulnerable groups, such as limited-English speaking individuals, have their civil rights protected. Experience indicates that carefully targeted compliance reviews are likely to benefit large numbers of students through policy or program changes that are designed to secure the promise of equal opportunity -- unlike complaints where remedies may benefit only the complaining party. OCR initiated 146 reviews in FY 1996 -- the most undertaken within the last eight years -- and brought 173 reviews to successful resolution.

Selection of reviews is based on various sources of information, including survey data and information provided by parents, education groups, media, community organizations and the public. OCR conducts compliance reviews on such issues as:

- ensuring nondiscriminatory practices are followed in the placement of minority students in special education and low track courses
- ensuring that access to English language instruction as well as content courses and other educational benefits are afforded to limited-English proficient students
- ensuring student assessment practices are nondiscriminatory

- providing nondiscriminatory access to gifted and talented and other high ability programs and classes

OCR recognizes that federal, state, and local education agencies, as well as parents and other interested parties, share a common goal of providing equal opportunity and access to high quality education. OCR combines its expertise with these partners and stakeholders to come up with effective solutions, including educationally sound remedies that increase educational opportunities for all students.

OCR emphasizes the benefits of prevention over after-the-fact reactive solutions. Here are just a few examples of recent efforts:

- OCR provided a clarification of the requirements of Title IX as it applies to provision of equal opportunity in intercollegiate athletics. Based on settled legal principles, the clarification resulted from discussions with interested parties over a two-year period and from consideration of nearly 300 written comments. The final clarification was sent to the presidents of all colleges and universities that have intercollegiate athletics programs, as well as over 4,500 other interested parties.

> "Take advantage of OCR services. These are the folks that have the knowledge."
>
> Assistant Athletic Director
> Georgetown University

- OCR's Philadelphia Office conducted a national conference on minorities and special education. Conference participants looked in depth at issues involving the testing of minority students and the effect that cultural differences can have on interpreting results; at special education referral practices; and at ways to prevent misidentification of minority students. The Mayor of Philadelphia issued a proclamation in honor of OCR's work in this area.

> "In many ways, we see ... the [Sexual Harassment] Guidance as a 'godsend.' ... [It provides] in one convenient place the clear implications of the statutes, regulations, and case law."
>
> Vice President for Student Affairs, University of Maine

- OCR published for comment draft guidance regarding the application of Title IX to instances of peer [redacted] harassment that occurs during school activities or on school grounds by one student against another. The guidance provides educational institutions with information on the standards used by OCR to investigate and resolve cases involving claims that peer sexual harassment has created a hostile environment.

In all of our work, OCR engages stakeholders and comes to the table to provide common sense guidance to real-world problems.

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OCR's Technical Assistance Helps People and Institutions

The aim of OCR's technical assistance is to prevent violations of the civil rights laws. This is accomplished by helping recipients comply with the laws and helping beneficiaries understand their rights. In view of the millions of students protected by the civil rights laws, OCR recognizes that its efforts alone are insufficient to stop illegal discrimination in education. Students, parents, and educators must have the knowledge and skills to prevent illegal discrimination from occurring in the first place.

OCR provides assistance to enable institutions to come into compliance during the complaint resolution process or during a compliance review. In addition, OCR also engages in a broad range of proactive outreach through such activities as onsite consultations, conference sponsorship and participation, training classes, workshops, and community meetings. Written and telephone guidance is also provided in response to tens of thousands of inquiries received annually. OCR continually compiles strategies and programs that hold promise in addressing civil rights concerns. Also, many OCR offices have developed customer service teams to be more responsive to our partners and stakeholders and members of the public. OCR has established a home page, which is located at http://www.ed.gov/offices/ocr.

Impact of the Civil Rights Laws

Enforcement of the federal civil rights laws has helped bring about profound changes in American education as it has improved the educational opportunities of millions of students. Many barriers that once prevented individuals from freely choosing the educational opportunities and careers they would like to pursue have been removed. For example, we are witnessing a growing participation of minority students in Advanced Placement (AP) classes. Many school systems are now making it possible for students who are not yet proficient in English to participate effectively in their educational programs. Many more students with disabilities are now able, with the provision of supplementary aids and services, to participate in regular education classes. Female and male students are taking algebra, geometry, calculus, biology and chemistry in about the same proportion. There also has been a dramatic increase in the number of women entering traditionally male-dominated professional fields.

The civil rights laws have opened the doors to our schools and classrooms, our auditoriums, athletic fields and arenas. In response, people from the many diverse backgrounds that represent today's America are coming through the doors, on the way to becoming our future leaders in business, government, science, arts, and education.

Contacting OCR

Anyone who would like more information about the laws enforced by the Office for Civil Rights, how a person can file a complaint, or how OCR may provide technical assistance, may contact one of OCR's enforcement offices. The addresses and telephone numbers of the enforcement offices are listed on the last page.

OCR has demonstrated its ongoing commitment to innovation and improvement of its civil rights enforcement efforts. Here are just a few examples of OCR's improvements:

- In furtherance of its reinvention initiatives, OCR has moved from a system of required investigative procedures to one of flexible resolution approaches. OCR has made students, parents, and school officials more central to the resolution of their own complaints. Likewise, our office structures have been flattened by shifting to a team model that reduces layers of review and increases the level of responsibility assumed by staff directly involved in cases, resulting in better service to our customers.

> "I strongly support [OCR's] philosophy that ... help[s] kids in a positive way. [OCR's] reviews will achieve twice the results of the old way of doing compliance reviews. We love [this] approach in Kansas and appreciate the Region's helpful and constructive way of working with our schools. ... [OCR's new approach] is a breath of fresh air from the federal government."
>
> Dr. Dale Dennis
> Interim Chief State School Officer, Kansas

- OCR in 1996 began a redesign of its Elementary and Secondary School Civil Rights Survey to make it more useful and accessible to OCR staff as well as user groups at the local, state, and national level. A private research organization, in collaboration with users and other stakeholders, is developing recommendations on using technology to receive, process, and edit survey information. The study also is exploring cost efficient ways to enable survey data to be in the hands of OCR staff and other users in a more expedited manner.

- Together with State agencies and other stakeholders, OCR developed a Memorandum of Procedures to provide guidance in monitoring vocational education programs. A streamlined process will allow states to devote more resources to ensuring compliance and dramatically less effort on administrative reporting requirements.

OCR's operational improvement efforts have received special recognition. Three OCR offices -- New York, Kansas City, and Cleveland -- have received the Vice President's Heroes of Reinvention (Hammer) Award, in recognition of OCR's significant contributions to the streamlining and improvement of government. The awards resulted from OCR's work in resolving discrimination complaints, developing partnerships with stakeholders, and improving customer service.

CHALLENGES

Although OCR is justifiably proud of its achievements, we would be remiss if we failed to emphasize the many challenges OCR faces.

First is the reality of discrimination. Despite the progress of the past decades, and despite federal, state and local efforts to eradicate barriers to equal educational opportunity, real and flagrant examples of intentional discrimination remind us that not every member of the education community can be counted on to act in good faith. In dramatically more cases, adequate education and assistance have not reached those who may be ignorant of the civil rights laws and the terrible consequences for students and the country alike when equal access to educational opportunity is denied.

Second is the increasing gap between the work of the Office and the resources available to carry out our vital mission. Each decade since 1964 has brought additional responsibilities to the Office for Civil Rights. More recent budget pressures at the federal, state and local level make it perhaps more difficult for schools, colleges and universities to confront the problems of equal educational opportunity. So while OCR loses staff -- its most vital resource -- its workload continues to grow. This is shown on the table below.

U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
(FY 1990 - FY 1997)

FY	Presidential Request	Congressional Appropriation*	FTE		Complaints		Compliance Reviews	
			Ceiling	Usage	Filed	Resolved	Initiated	Resolved
1990	$45,178,000	$44,572,000	820	815	3,384	3,130	32	30
1991	$49,900,000	$48,404,000	820	797	3,809	3,497	41	22
1992	$56,000,000	$53,625,000	855	848	4,432	4,180	77	50
1993	$61,400,000	$56,402,000	858	854	5,090	4,484	101	82
1994	$56,570,000	$56,570,000	851	821	5,302	5,751	144	90
1995	$61,457,000	$58,236,000	833	788	4,981	5,559	96	178
1996	$62,784,000	$55,277,000	763	745	4,828	4,886	146	173
1997	$60,000,000	$54,900,000	724	–	–	–	–	–

*FY 1990 and FY 1995 Appropriation after sequestration; FY 1997 Appropriation after recision

OCR's budget has dropped from a high of $58,236,000 in FY 1995 to $55,277,000 in FY 1996 and only $54,900,000 in FY 1997.

Adequate investment is required to provide funding for OCR's staff and non-personnel needs. These include costs of prosecuting cases, development of strong, educationally sound remedies, staff improvement, legal research, publications and outreach, and the national civil rights surveys postponed in FY 1996 because of lack of funding level under the continuing resolutions. The President has proposed a budget for OCR in FY 1998 of $61,500,000. This is less than a dollar per year for each of America's students. An end to illegal discrimination in the nation's schools and colleges deserves no less.

"I believe the most important thing you can do is to have high expectations for students -- to make them believe they can learn, to tell them they're going to have to learn really difficult, challenging things, to assess whether they're learning or not, and to hold them accountable as well as to reward them. ... Once you have high standards and high expectations, there is an unlimited number of things that can be done."

President Clinton
National Education Summit
March 27, 1996

"While I rode in the back seat on the bus of opportunity during my lifetime, I want my daughter's daughter and her peers to be able to select a seat based on their abilities and their willingness to work. Don't deny them the things I dreamed of, don't deny them the opportunities that are and should be their birth right."

Joan Martin, parent and Senior Associate
Director of Athletics, Monmouth University

U.S. Department of Education
Office for Civil Rights

Eastern Division

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U.S. Department of Education
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FAX#(617) 223-9669; TDD (617) 223-9695

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